

Claimant testified that he injured his back on May 27, 1999, when he slipped as he stepped down from a road grader. He worked several days after the injury and then was off for a brief vacation. Claimant went to Wyoming for a friend's wedding. When he returned, claimant reported the injury and asked for medical treatment. He reported the injury on June 7, 1999, eleven calendar days after the accident. Claimant testified he did not report the injury earlier because he did not think it was serious and did not know he was required to report an injury within ten days.

Respondent argues the evidence fails to meet claimant's burden to prove that he suffered accidental injury arising out of and in the course of his employment. Respondent points out there was no witness to the accident, claimant worked several days after the accident, and claimant only reported the accident after he returned from the trip to Wyoming. These circumstances do raise concerns about when and where the accident and injury occurred. But the Administrative Law Judge had the opportunity to observe the claimant testify and nothing in the factors cited by respondent directly rebuts claimant's testimony. The decision turns primarily on claimant's credibility. The Board generally gives some deference to an evaluation of credibility by an administrative law judge when he/she has observed the witness testify. The Board does so in this case and concludes the Order should be affirmed.

Although the notice was eleven calendar days, the notice was less than ten days when the ten days are calculated by excluding the weekend days as required under *Bain v. Cormack Enterprises, Inc.*, Docket No. 82,200 (Kan. 1999).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Pamela J. Fuller on August 20, 1999, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 1999.

BOARD MEMBER

c: Brian D. Pistotnik, Wichita, KS
Richard L. Friedeman, Great Bend, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director